

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

NOTICE OF PROPOSED RULEMAKING

TITLE 22, CALIFORNIA CODE OF REGULATIONS

AMENDMENT TO SECTION 12705.
SPECIFIC REGULATORY LEVELS POSING NO SIGNIFICANT RISK

NOTICE IS HEREBY GIVEN that the Office of Environmental Health Hazard Assessment (OEHHA) proposes to establish a specific regulatory level posing no significant risk for nitromethane and amend Title 22, California Code of Regulations, Section 12705(b).¹

PUBLIC PROCEEDINGS

Any written statements or arguments regardless of the form or method of transmission must be received by OEHHA by 5:00 p.m. on **January 22, 2008**, which is hereby designated as the close of the written comment period.

Written comments regarding this proposed action can be sent by mail or by fax addressed to:

Susan Luong
Office of Environmental Health Hazard Assessment
Proposition 65 Implementation Program
P. O. Box 4010
Sacramento, California 95812-4010
FAX: (916) 323-8803
Telephone: (916) 445-6900
sluong@oehha.ca.gov

Comments sent by courier should be delivered to:

Susan Luong
Office of Environmental Health Hazard Assessment
1001 I Street, 19th Floor
Sacramento, California 95814

It is requested but not required that hard-copy statements or arguments be submitted in triplicate.

¹ All further regulatory references are to Title 22 of the California Code of Regulations unless otherwise indicated.

A public hearing to present oral comments will be scheduled only upon request. Such request must be submitted in writing no later than 15 days before the close of the comment period on January 22, 2008. The written request must be sent to OEHHA at the address listed below no later than **January 7, 2008**. A notice for the public hearing, if one is requested, will be mailed to interested parties who are on the Proposition 65 mailing list for regulatory public hearings and posted on the OEHHA web site at least ten days in advance of the public hearing date. The notice will provide the date, time, location and subject matter to be heard.

If a hearing is scheduled and you have special accommodation or language needs, please contact Susan Luong at (916) 445-6900 or sluong@oehha.ca.gov at least one week in advance of the hearing. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

CONTACT

Please direct inquiries concerning processing of the action described in this notice to Susan Luong in writing at the address given above, or by telephone at (916) 445-6900. Cynthia Oshita is a back-up contact person for inquiries concerning processing of this action and is available at the same telephone number.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code section 25249.5 *et seq.* commonly known as Proposition 65 (hereinafter referred to as “the Act”), prohibits a person in the course of doing business from knowingly and intentionally exposing any individual to a chemical that has been listed as known to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual (Health and Safety Code Section 25249.6). The Act also prohibits such persons from knowingly discharging a listed chemical into water or onto or into land where such chemicals pass or probably will pass into any source of drinking water (Health and Safety Code Section 25249.5).

For chemicals known to the State to cause cancer, an exemption from the above requirements is provided by the Act when a person in the course of doing business is able to demonstrate that an exposure for which he or she is responsible poses no significant risk or that a discharge which otherwise complies with all applicable requirements would not cause any significant amount of the discharged or released chemical to enter any source of drinking water (Health and Safety Code Sections 25249.9 and 25249.10). A determination that a level of exposure poses no significant risk may be made utilizing regulations that have previously been adopted by OEHHA (Sections 12701-12721). Section 12701 describes alternative methods for making such a determination. Section 12705 sets forth the process by which OEHHA may identify specific regulatory levels for determining “no significant risk” for purposes of Proposition 65.

Details on the basis for the proposed level are provided in the reference cited below, which is incorporated in the rulemaking record. The reference is a risk assessment document prepared by OEHHA describing and summarizing the derivation of the regulatory level listed below.

This amendment to Section 12705(b) would adopt the following “no significant risk” level for one chemical listed as known to cause cancer:

Chemical	NSRL, in units micrograms per day	Reference
Nitromethane	39	OEHHA (2007)

The risk assessment used by the Office of Environmental Health Hazard Assessment to determine the stated level is as follows:

Office of Environmental Health Hazard Assessment (OEHHA, 2007). No Significant Risk Level (NSRL) for the Proposition 65 Carcinogen Nitromethane. OEHHA, Reproductive and Cancer Hazard Assessment Branch, California Environmental Protection Agency, Oakland, December 2007.

AUTHORITY

Health and Safety Code Section 25249.12.

REFERENCE

Health and Safety Code Sections 25249.5, 25249.6, 25249.9, 25249.10 and 25249.11.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

OEHHA has determined the proposed regulatory action would not pose a mandate on local agencies or school districts nor does it require reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. OEHHA has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

COSTS OR SAVINGS TO STATE AGENCIES

OEHHA has determined that no savings or increased costs to any State agency will result from the proposed regulatory action.

EFFECT ON FEDERAL FUNDING TO THE STATE

OEHHA has determined that no costs or savings in federal funding to the State will result from the proposed regulatory action.

EFFECT ON HOUSING COSTS

OEHHA has determined that the proposed regulatory action will have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE

OEHHA has made an initial determination that the adoption of the regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

IMPACT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS/BUSINESSES

OEHHA has determined that the proposed regulatory action will not have any impact on the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business within the State of California.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The OEHHA is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON SMALL BUSINESSES

OEHHA has determined that the proposed regulation will not impose any requirements on small businesses. Rather, the proposed regulation will assist small businesses subject to the Act in determining whether or not an exposure for which they are responsible is subject to the warning requirement or discharge prohibition.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), OEHHA has determined that no reasonable alternative considered by OEHHA, or that has otherwise been identified and brought to the attention of OEHHA would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

OEHHA has prepared and has available for public review an Initial Statement of Reasons for the regulation, all the critical information upon which the regulation is based, and the

text of the regulation. A copy of the initial statement of reasons, a copy of the text of the regulation and a copy of the risk assessment which was used by OEHHA to determine the NSRL are available upon request from OEHHA's Proposition 65 Implementation Program at the address and telephone number indicated above. These documents are also posted on OEHHA's Web site at www.oehha.ca.gov.

AVAILABILITY OF CHANGED OR MODIFIED TEXT: The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available at least 15 days prior to the date on which OEHHA adopts the resulting regulation. Notice of the comment period on changed regulations and the full text will be mailed to individuals who testified or submitted oral or written comments at the public hearing if one was held, whose comments were received by OEHHA during the public comment period, and who request notification from OEHHA of availability of such change. Copies of the notice and the changed regulation will also be available at OEHHA's Web site at www.oehha.ca.gov.

FINAL STATEMENT OF REASONS

A copy of the final statement of reasons may be obtained, when it becomes available, from OEHHA's Proposition 65 Implementation Program at the address and telephone number indicated above. The final statement of reasons will also be available at OEHHA's Web site at www.oehha.ca.gov.

OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT

Allan Hirsch
Chief Deputy Director

Dated: December 7, 2007